

New Jersey Department of Environmental Protection

Bureau of Release Prevention

**A Guide to Plan Amendments,
Advance Notifications, and
Minor Information Changes**

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INTRODUCTION

In New Jersey's past, uncontrolled releases of hazardous substances have harmed the public, caused lasting damage to the environment, and incurred extraordinary expenses for cleanup. The Legislature responded by mandating, in the Spill Compensation and Control Act (Spill Act) (N.J.S.A. 58:10-23.11a *et seq.*) that certain facilities, termed major facilities, that have the potential to store large quantities of hazardous substances take steps to prevent releases. Regulations developed pursuant to the Spill Act are contained in N.J.A.C. 7:1E, Discharges of Petroleum and Other Hazardous Substances (DPHS rules). Under these regulations, major facilities must document their compliance with discharge prevention and response standards through two plans, the Discharge Prevention, Containment and Countermeasure (DPCC) plan, and the Discharge Cleanup and Removal (DCR) plan.

To be effective, the DPCC/DCR plans must accurately reflect current operations at the major facility. However, owners or operators of major facilities are constantly making changes in response to new opportunities and technologies. Keeping the DPCC/DCR plans up to date must therefore be a regular part of every owner or operator's compliance effort.

There are two primary means of ensuring that the DPCC/DCR plans are kept current. One is the triennial renewal process. Every three years, the DPCC/DCR plans must be reviewed and revised by the owner or operator, and submitted to the Bureau of Release Prevention (Bureau) for review and approval. Information on the renewal process can be found in the Bureau's guidance documents, including *Plan Renewal Guidance*, and *A Guide to the Preparation of Discharge Prevention, Containment and Countermeasure (DPCC) and Discharge Cleanup and Removal (DCR) Plans and Plan Renewal*, available on the Bureau's web site at <http://www.nj.gov/dep/rpp/brp>. The other primary means of keeping plans current is the amendment process, whereby changes that affect the facility's potential for a discharge or the response to a discharge are incorporated into the plans in a timely manner.

This guidance document discusses when a plan amendment is needed and how it is prepared and submitted. It also covers advance notification requirements, for when the Bureau must be notified prior to certain types of changes being undertaken at a major facility, and submitting minor changes to the plans.

MINOR INFORMATION CHANGES

There are certain changes that can occur at a major facility which can be considered minor in nature. Such changes do not directly affect the way in which the facility operates, but the Bureau still needs to be made aware of them, pursuant to N.J.A.C. 7:1E-4.8(e). These are generally items that affect the ability of the Bureau to contact the owner or operator or other personnel at the facility. When these types of changes occur, the Bureau must be notified in writing within thirty (30) days of when the change occurred. The most common changes that fall into this category are:

- a. The name, mailing address, or phone number of the facility changes, for example the municipality rennumbers the street. However, if the change is due to a change of ownership, a plan amendment is required.
- b. The name or phone number of the facility contact for discharge prevention-related matters changes, for example a new area code is instituted.
- c. The name or phone number of any employee listed in the DPCC or DCR plan changes, for example if the emergency coordinator retires and another employee takes on those duties.
- d. Financial responsibility documents are updated or replaced, for example a letter of credit is replaced by a guarantee.
- e. The name or address of the owner's or operator's registered agent changes.

Minor changes are not considered plan amendments so there is no need for them to be certified pursuant to N.J.A.C. 7:1E-4.11. Revised pages for insertion into the plan should be included with the owner or operator's submission. Upon receipt, the changes are reviewed for regulatory compliance. If no problems are found, the Bureau sends an acknowledgement letter to the facility. If concerns are raised, the Bureau will contact the owner or operator for clarification.

ADVANCE WRITTEN NOTIFICATION

Some types of construction, installation and modification at a major facility require notification of the Bureau in writing at least sixty (60) days before the start of construction, installation or modification, pursuant to N.J.A.C. 7:1E-4.8(a). This advance notification is limited to construction, installation and modification of aboveground storage tanks or other enclosed storage space, any structures appurtenant to storage tanks or storage spaces, leak

detection, monitoring or prevention systems, and safety systems. It is not possible to provide a comprehensive list of every type of change that might require advance notification. However, some examples of work that require advance notification are:

- a. Installing a new aboveground storage tank for a hazardous substance or replacing an existing one. This applies even if the tank is below 2,000 gallons in size. In this example, the advance notification would include the size of the storage tank and the material of construction, the location where the tank is planned to be installed or replaced, the hazardous substance to be stored in the tank, and secondary containment planned for the tank.
- b. Moving a hazardous substance storage tank to a new location within the facility. In this example, the advance notification would include the location where the tank is planned to be installed, the hazardous substance to be stored in the tank, and secondary containment planned for the tank.
- c. Performing repairs or modifications on secondary containment in cases where the integrity of the containment system would be compromised. This does not include routine repairs, such as filling cracks.
- d. Tank bottom replacements, shell repairs, installation of new high-level alarms, or installation or modification of overfill lines.
- e. Installing or modifying a drum storage area, enclosed hazardous substance storage area, or tank car or tank truck loading/unloading area. As with other types of installations, the advance notice would include the approximate size of the area, the proposed location, and information on secondary containment.

Any work contained in the upgrade schedule in the facility's approved DPCC plan pursuant to N.J.A.C. 7:1E-4.2(d) does not require advance notification.

It is highly recommended that the Bureau be contacted to discuss advance notification requirements where applicability is in question. Even if notification is not required, discussions with Bureau staff prior to commencing the work may uncover potential compliance issues early in the development process, thereby avoiding costly change orders and post-construction alterations.

The advance notification must be in writing, pursuant to N.J.A.C. 7:1E-4.8(a). The most common form it can take is a letter. The written notice must describe the proposed work, such as the general location of construction and the types and approximate volumes of hazardous substances involved, and must include a preliminary schedule for project completion. Diagrams of the proposed work are not required, but can be useful in ensuring that it will be in compliance with the DPHS rules.

When an advance notification is received by the Bureau, the owner or operator may receive a telephone call. Bureau staff may wish to discuss compliance aspects of the proposed change at the facility, to ensure that once a project is complete it will meet all regulatory requirements. A telephone call is made or an e-mail is sent when the proposed change does not require an amendment to the plan. A written response is made when an amendment to the plan will be required. The written response reminds the owner or operator that all requirements of N.J.A.C. 7:1E must be addressed by the changes proposed. The Bureau wants to ensure that any changes made at the facility will be in compliance with the DPHS rules. If the owner or operator has any questions or concerns regarding his or her pending changes, it is highly recommended that he or she contact the Bureau to discuss them.

The Bureau understands that construction projects require flexibility, and that changes may need to be made as work proceeds. Information contained in the notification is considered advisory. However, a major change in the scope, location or timeframe of the proposed work requires additional notification to the Bureau. If a proposed construction project is cancelled or is put on indefinite hold, it is important to notify the Bureau of that fact.

PLAN AMENDMENTS

Pursuant to N.J.A.C. 7:1E-4.8(b), DPCC/DCR plans must be amended when a change in operation occurs at the facility that materially affects the potential for a discharge of a hazardous substance. Such changes include but are not limited to:

- a. Most things requiring advance notification.
- b. Storing a hazardous substance in a tank not described and accounted for in the approved DPCC/DCR plans.
- c. Changing the hazardous substances a tank truck loading/unloading area is used for, when such service has not been described and accounted for in the approved DPCC/DCR plans.
- d. Installing, starting up or closing down a process area where hazardous substances are used.
- e. Change of ownership, which is specifically addressed below.
- f. A change is sought in the DPCC/DCR plan's tank inspection schedule.
- g. A change is sought in the DPCC/DCR plan's upgrade schedule.
- h. Change of discharge cleanup organization.

When a plan amendment is necessary, it must be submitted to the Bureau within thirty (30) days of when the change became effective. For example, an amendment is expected within thirty days of the date a new tank is fully capable of storing hazardous substances (note: this may be substantially earlier than when the tank is actually put into operation), or of the date a change of ownership becomes legally effective. Completion of a project listed on the upgrade schedule in an approved DPCC plan does not require submission of a plan amendment, except when the Bureau has previously notified the owner or operator in writing that an amendment will be necessary.

Change of Ownership

When ownership of a major facility changes, a plan amendment must be submitted. This amendment is the means by which the new owner or operator demonstrates continued commitment to compliance at the facility under N.J.A.C. 7:1E. The amendment must include at least the following:

- a. Certifications by the new owner or operator, pursuant to N.J.A.C. 7:1E-4.11(a) and (b).
- b. Financial responsibility documents that reflect the change in ownership, pursuant to N.J.A.C. 7:1E-4.4.
- c. Revisions to those plan pages affected by the change in ownership. This may include pages with information on ownership, registered agent, contact personnel, and other related data.

Additionally, the amendment may also include operational information, if the new owner or operator plans to institute new operations or changes in operations currently described in the plan. For example, if the new owner plans to call in a discharge cleanup organization for all incidents at the facility while the previous owner cleaned up discharges up to a certain size, that change would be incorporated into the DCR plan as an amendment. It is not necessary to change page headers or drawing titles at this time to reflect a change in name, if one occurs concurrent with the change in ownership. Instead, a page can be inserted at the start of the plan indicating that references to the old name now refer to the new name. At the next triennial renewal, the name change must be incorporated throughout the plan.

Changes to Inspection Schedules, Upgrade Schedules and Test Methods

Certain tank modifications require adjustment of the tank inspection schedule, and these changes must be addressed in a plan amendment. For example, the test intervals for tanks following API Standard 653 are based on measured corrosion rates. Major tank modifications like bottom replacements require reevaluation of the corrosion rate, and therefore the tank inspection schedule. A new tank inspection schedule must be prepared, consistent with the applicable inspection protocol.

Methods used to test or inspect tanks, or to establish the inspection schedules, cannot be changed until a plan amendment has been approved by the Bureau. This includes changing from one inspection protocol to another, for example from a five-year inspection cycle under N.J.A.C. 7:1E-2.16(h) to an API 653 program under N.J.A.C. 7:1E-2.16(d). The amendment requirement also applies to the use of an alternative test method in lieu of the required procedure identified in the approved plan.

Similarly, changes to inspection schedules for underground piping must first be proposed as plan amendments.

Some DPCC plans may also contain an upgrade schedule setting an enforceable timetable for achieving compliance pursuant to N.J.A.C. 7:1E-4.2(d). An owner or operator may encounter conditions that make it unlikely that the required work will be completed by the date stipulated in the schedule. In these circumstances, prior to the due date in the schedule, the owner or operator may request an extension. Such an extension request is considered a plan amendment. Therefore, the owner or operator must prepare a revised schedule and submit it as a plan amendment. The owner operator must provide clear justification for the delay.

Any changes to a schedule or an associated part of the plan must be made before dates come due. This includes requests for an extension to an established deadline in the tank testing schedule due to extenuating circumstances. Schedules cannot be changed after-the-fact to avoid enforcement action. Further, changes only become effective upon review and approval by the Bureau. Until an amendment is approved, the previous schedule remains in effect. In light of these restrictions, amendments addressing inspection methods and schedules should be submitted well in advance of upcoming due dates.

The Bureau is under no obligation to grant schedule extensions, and may reject requests when insufficient or unacceptable justifications are presented.

If the owner or operator wishes to perform a tank inspection ahead of the date scheduled in the DPCC/DCR plans, no plan amendment is required. However, the tank inspection schedule must be revised at the next triennial renewal to reflect the work completed.

Temporary Storage Tanks

There are circumstances where an owner or operator may find it necessary to use a storage tank on a temporary basis. A common example is the use of a fuel tank for a backup electrical generator during a construction project. When a tank will be on site for less than six (6) months, it is acceptable to notify the Bureau in writing of the tank without amending the plan. This temporary use letter must be received by the Bureau 60 days prior to bringing the tank on site. The letter must fully describe the installation, including how the tank will be filled, and must document how the requirements of N.J.A.C. 7:1E will be satisfied. The letter must also specify the dates of installation and removal. This temporary use letter fulfills both the 60-day notification requirement and the plan amendment submission requirement.

If a temporary tank will be kept on site for six months or longer, a full plan amendment is required. After project completion, the plan must be amended a second time when the tank is removed. Also, if the owner or operator using a temporary tank later determines that it must be kept on site for more than six months, a plan amendment must be submitted.

What to Submit with Your Plan Amendment

A plan amendment consists of revised pages that will be incorporated into the approved plan, along with required certifications as described below. Only those pages that have changed should be submitted, not the entire plan. The amended plan must accurately describe the facility and its operations, and must satisfy all requirements of N.J.A.C. 7:1E-4. A cover letter should accompany the new documents explaining the reasons for the amendment and providing any supporting information.

So that the format of the plan amendment is consistent with that of the already-approved DPCC/DCR plan, the Bureau has several recommendations. It is not required that plan amendments follow this formatting model, but it makes approval of the amendment smoother and easier. It is highly recommended that the plan amendment be submitted in a three hole-punched format and not with a coil spine or other binding so that replacement pages can be easily inserted into the approved plan. It is also recommended that revision dates be used on all pages. Page numbers and section numbers are recommended to facilitate cross-references within the DPCC/DCR plans.

Adding or deleting text may cause the locations of page breaks in the document to change. Any pages where the first or last words have changed must be reprinted so that the amended plan on file at the Bureau is continuous and complete. Make certain that page numbers are in series with the surrounding pages, without missing or repeated page numbers, and the text is continuous, without omissions or duplications. If a large number of pages would have to be reprinted because of repagination, new pages can be inserted with sub-numbering instead, for example pages 5, 5a and 5b. References to the revised pages, including those in the Table of Contents, must be updated as necessary so that they remain valid.

The certifications by facility representatives that are required pursuant to N.J.A.C. 7:1E-4.11(a) and (b) must accompany all plan amendments. In addition, amendments to the DPCC plan must be certified by a licensed professional engineer (PE) pursuant to N.J.A.C. 7:1E-4.11(e) whenever the documented change entails the application of sound engineering practice. Examples include installation of new tanks or tank truck loading/unloading areas; construction or major repair of secondary containment; and alteration of other facility infrastructure such that the risk of discharge is significantly changed. Certification by a PE is not required for all amendments. For example, if an upgrade schedule needs to be revised due to a delay in obtaining permits or a tank integrity test needs to be rescheduled because the certified inspector cannot perform the tests by the dates in the current plan, a PE certification is not needed, because no engineering work needs to be performed in conjunction with these changes. Questions regarding the need for a PE certification for a particular amendment should be directed to the Bureau.

If the off-site deployment plan is revised as part of a plan amendment, the certifications by an aquatic scientist and an ornithologist that are required pursuant to N.J.A.C. 7:1E-4.11(f) may be needed. This includes cases where the potential impact of a discharge to off-site environmental resources differs from that present before the modification was made. Questions regarding the applicability of this requirement to a particular modification should be directed to the Bureau.

The General Site Plan (GSP) must accurately reflect the current facility, pursuant to N.J.A.C. 7:1E-4.10(a)1. As such, it must be revised whenever the subject of an amendment makes the existing map inaccurate. The revised GSP normally must be certified by a licensed land surveyor pursuant to N.J.A.C. 7:1E-4.10(a)3 at the time of the amendment. However, if a facility is engaged in a phased construction project, contact the Bureau so that a deadline for a certified GSP submission may be established. A digital copy of the revised GSP must be submitted with the plan amendment pursuant to N.J.A.C. 7:1E-4.10(e). Additionally, Drainage and Land Use (DLU) maps and Topographic/Environmentally Sensitive Areas (ESA) maps may need to be revised if they no longer satisfy the requirements of N.J.A.C. 7:1E-4.10. When DLU maps are revised, digital copies must be submitted, pursuant to N.J.A.C. 7:1E-4.10(e). No digital copies of ESA maps are required. The DLU map is not required to be signed and sealed by a licensed land surveyor as long as the facility boundary is taken from a map that is signed and sealed by a licensed land surveyor. ESA maps do not need to be certified by licensed surveyors.

Facilities undertaking major construction are advised to review mapping requirements with the Bureau prior to submitting their amendment.

Amendment Review Process

Amended plans must show that the facility is in compliance with all aspects of N.J.A.C. 7:1E, and each amendment submission is reviewed accordingly. If an incomplete submission is received by the Bureau, the owner or operator is notified of what additional information needs to be submitted. Review may not begin until a complete submission is received. Amendment review focuses on those parts of the plan that are being amended and how that may affect the entire plan.

After receiving a complete proposed amendment, the Bureau provides the owner or operator with its findings within sixty (60) days. A meeting between facility and Bureau staff may be scheduled to discuss the amendment. If a physical change is being made at the facility, the amendment review may include a site inspection depending on the nature of the physical change; for example, new tank installation likely will result in a site inspection while a tank bottom replacement likely will not. A technical site inspection may also be conducted to verify the accuracy of the amendment and any revised maps, drawings or tables. If the review concludes that revisions are needed to the amendment to make it approvable, a technical deficiency letter is sent to the owner or operator summarizing the reasons why the submission cannot be accepted in its present form. Upon receiving the letter, the owner or operator has thirty (30) days to respond. Failure to submit information required by the Bureau in a timely manner may result in enforcement action pursuant to N.J.A.C. 7:1E-4.5(f), and may also lead to denial of the amendment pursuant to N.J.A.C. 7:1E-4.8(c).

If the amendment is approved, the Bureau sends an approval letter to the owner or operator. Upon receiving the approval letter, the facility must submit a second copy of the amendment to the Bureau within thirty (30) days, pursuant to N.J.A.C. 7:1E-4.8(d). This second copy must be identical to the approved amendment in every respect, except that photocopies can be submitted in lieu of signed original documents. If the amendment is not compliant with the DPHS regulations, it cannot be approved and a letter denying approval of the change to the plan is sent to the owner or operator. However, if the owner or operator has contacted the Bureau as recommended in the Advance Written Notification section of this guidance, denial should be a rare occurrence.

Mailing Submissions and Verifying Delivery

Submissions made by U.S. Postal Service should be sent to the following address, to the attention of the Bureau staff member assigned to reviewing submissions for the site, if known:

Bureau of Release Prevention
New Jersey Department of Environmental Protection
P.O. Box 420, Mail Code 22-03D
Trenton, NJ 08625-0420

Submissions made by overnight carriers require a physical address for delivery. Submissions being made in this manner should be sent to:

Bureau of Release Prevention
New Jersey Department of Environmental Protection
401 E. State Street, 7th Floor
Trenton, NJ 08608

The Bureau's phone number for courier delivery contact is (609) 633-0610. Documents may also be hand-delivered to our East State Street offices. Please call ahead for instructions.

Delivery of documents to the Bureau within the required time frame is the sole responsibility of the owner or operator, even when documents are lost in the mail. Owners or operators are therefore encouraged to use verifiable means of tracking their submissions and to check that the package was received. Return receipt numbers and overnight tracking numbers should be retained to assist in verification. If questions arise, please contact the Bureau.

Additional Information

Questions regarding the Discharge Prevention Program may be directed to the Bureau of Release Prevention, NJDEP, P.O. Box 420, Mail Code 22-03D, 401 E. State Street, 7th Floor, Trenton, NJ 08625-0420.

Phone (609) 633-0610

Web Site: <http://www.nj.gov/dep/rpp/brp/dp>